



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/539,541

11/14/2005

Peter Bauer

2002P01555WOUS

8001

46726

7590

03/19/2009

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

03/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,541	Applicant(s) BAUER ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10 and 12-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 18 is/are allowed.
- 6) ☒ Claim(s) 10, 12-15, 17, 19, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 20-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> |

Continuation of Attachment(s) 6). Other: Attachment A (blank first page,drawing second page).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Namely, it is improper and indefinite for claims 12-15 to depend from a canceled claim. For examination purposes, these claims will depend from claim 10.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 13, 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by McClellan (2,750,901). McClellan teaches a door/closure (40) comprising: an outer wall (140), inner wall (136), insulation (151) there between and a first closure element (141) with a step cross section fastened between the walls, the element as a whole inherently being adjusted relative to the walls during assembly. A portion of the step being parallel to the outer and inner wall. Please note that only the

Art Unit: 3637

door is being claimed, the closure element capable of covering a control arrangement or condition-indicating panel since it is a solid feature.

Claims 10, 13, 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al (4,685,402). Nelson teaches a door/closure (17) comprising: an outer wall (see Fig. 5), inner wall (41), insulation (37) there between and a first closure element (49) with a step cross-section fastened between the walls, the element as a whole inherently being adjusted relative to the walls during assembly. A portion of the step being parallel to the outer and inner wall. Please note that only the door is being claimed, the closure element capable of covering a control arrangement or condition-indicating panel since it is a solid feature.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al (4,685,402) in view of Lindsay (4,667,840). As stated above, Nelson teaches the limitations of claim 10, including a first closure element. Nelson also shows that the element is made of metal. For claim 12, Nelson fails to teach that the element is made of plastic. The examiner takes Official notice that plastic insulation panels/parts are well known in the art. This notice is backed-up by the reference of Lindsey, wherein

Art Unit: 3637

the use of plastic/insulation in a fire-resistant housing (see column 4, lines 37-39) is described. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the door of Nelson by using plastic elements therein, e.g. for the first closure element, depending on the desired need of the person constructing the panel, e.g. depending on personal preferences, materials readily available, etc. Please note that product by process limitations, e.g. "formed from injection molding", have been given no weight in the claims.

For claim 15, Nelson fails to teach the specific dimensions of the first closure element. The examiner takes Official notice that plastic insulation panels/parts having various dimensions are well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the door of Nelson by using a plastic element with a flank portion at least two centimeters, depending on the desired need of the person constructing the panel, e.g. depending on personal preferences, size of the refrigerator as a whole, etc.

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClellan (2,750,901) in view of Lindsey (4,667,840). As stated above, McClellan teaches the limitations of claim 10, including a first closure element. McClellan also shows that the element is made of metal. For claim 12, McClellan fails to teach that the element is made of plastic. The examiner takes Official notice that plastic insulation panels/parts are well known in the art. This notice is backed-up by the reference of Lindsey, wherein the use of plastic/insulation in a fire-resistant housing (see column 4, lines 37-39) is described. Therefore, it would have been obvious to one having ordinary

Art Unit: 3637

skill in the art at the time of the invention to modify the closure of McClellan by using plastic elements therein, e.g. for the first closure element, depending on the desired need of the person constructing the panel, e.g. depending on personal preferences, materials readily available, etc. Please note that product by process limitations, e.g. “formed from injection molding”, have been given no weight in the claims.

For claim 15, McClellan fails to teach the specific dimensions of the first closure element. The examiner takes Official notice that plastic insulation panels/parts having various dimensions are well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the closure of McClellan by using a plastic element with a flank portion at least two centimeters, depending on the desired need of the person constructing the panel, e.g. depending on personal preferences, size of the refrigerator as a whole, etc.

Claim 19 is rejected under 35 U.S.C. 103(a) as obvious over Teller et al (1,961,022) in view of McClure (2,596,706). Teller teaches a door (Fig. 2) on a refrigerator (1), the door comprising: an outer wall (15) and an inner wall (12) connected together along longitudinal edges; a first closure element (11) fastened to a transverse edge of the outer wall and a transverse edge of the inner wall, the first closure element together with the outer wall and the inner wall delimits an insulating intermediate space (with 15); and the inner wall is constructed to be shorter in the longitudinal direction than the outer wall, the first closure element bridges the difference in length between the inner wall and the outer wall. A plane is defined longitudinally through the door, this plane being between the inner and outer walls and not passing the outer wall of the

Art Unit: 3637

refrigerator body (see Attachment A). Teller fails to show an indicator or control panel on its refrigerator body. McClure teaches a refrigerator (10) with a control panel arrangement (14,15) at the front upper portion of its body, the arrangement being covered by the door of the refrigerator when the door is closed. It would have been obvious to one having ordinary skill in the art at the time of the invention to have a control or indicating panel in the upper front wall of the refrigerator body of Teller, such as the control panel taught by and in McClure, to provide a readily accessible control panel on the refrigerator. Note: when the door of Teller in view of McClure is in a closed position, the first closure element would inherently help cover the control or an indicting panel and the control/panel would extend outwardly from the door plane.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as obvious over McClure (2,596,706). McClure teaches a cooling compartment (10) including a back wall, an access opening, and a side wall, the side wall having an inner surface, an outer surface, and a cap portion (17), the cap portion extending between and being connected to each of the inner and outer surfaces of the side wall (see Fig. 3), the cap portion forming a termination of the side wall as viewed in a depth direction from back wall toward the access opening, the inner surface, the outer surface, and the cap portion together delimiting a volume there between in which insulating material (12) is disposed, and the side wall being located at a side of the cooling compartment as viewed in a lateral direction perpendicular to the depth direction from back wall toward the access opening, and a door (30) being movable between open and shut positions for respectively permitting access via, and closing off, the access opening of the cooling compartment.

Art Unit: 3637

A plane is defined longitudinally through the door, this plane being between the inner and outer walls and not passed the outer wall of the refrigerator body (see Attachment A). For claim 28, McClure fails to teach an indicia bearing portion being located outwardly of the cap portion of the side wall of the cooling compartment as viewed in the depth direction from back wall toward the access opening, the indicia bearing portion displaying thereon an indicia. The examiner takes Official notice that adhesive backed stickers with indicia thereon are well known in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the refrigerator of McClure by adding stickers with various types of indicia, e.g. with instructions or patterns, on the cap portion, for aesthetic purposes, for instructional purposes, etc. Note: a portion of the indicia bearing portion on which the indicia is displayed has a predetermined profile and a portion of the door that overlies the indicia on the indicia bearing portion in the closed position of the door has a corresponding profile shape. Also, at least a portion of the cap portion would inherently extend outwardly from the door plane.

Allowable Subject Matter

Claims 20-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16 and 18 are allowed.

Response to Arguments

Applicant's arguments filed December 22, 2008 have been fully considered but they are not persuasive.

Addressing the argument concerning the plane of the door verses the location of the control/indicia panel: first, the examiner contends that there are many planes that extend between the inner and outer walls of the door of Teller (see one shown by the examiner in Attachment A). Second, to choose a plane between the inner wall of the door and outer wall of the housing (which is before the outer wall of the door), would have been a reasonable choice, at least a portion of the control/indicia panel inherently being located beyond this plane.

Addressing the reintroduction of the rejections of McClellan and Nelson: because of the amendment to claim 10 fixing the 112 second paragraph rejection, the appliance is clearly not being claimed in combination with the door. Therefore, with only the door as the claimed subject matter, the doors of McClellan and Nelson (and Lindsey) now read over the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637

Wilkens
March 16, 2009